IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SECOND DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 1315 of 2005

Between:

P. Kailashnath Reddy, S/o. Sri P. Ramachandra Reddy, Hindu,
r/o. 8-2-604, road no. 10, Banjara Hills, Hyderabad.

..... PETITIONER

AND

1 Andhra Bank, M.G. Road, Branch, Secunderabad.
2 The Recovery Officer, Debts Recovery Tribunal,
5th Floor, Triveni Complex, Abids, Hyderabad.
3 The Presiding Officer, Debts Recovery Tribunal,
5th Floor, Triveni Complex, Abids, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of a writ of mandamus declaring the action of the 2nd and 3rd respondents in putting the house property of the petitioner bearing No. 8-2-604, Road No. 10, Banjara Hills, Hyderabad, for sale as illegal, arbitrary and opposed to the Art. 14 of the Constitution of India as well as Principles of Natural Justice and to pass such other order or orders.

Counsel for the Petitioner : MRS. S.NANDA

Counsel for the Respondents: MR.NUTY RAM MOHAN RAO for

R.1

Standing Counsel for Central Government

For RR 2 & 3

The Court made the following:

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.1315 OF 2005

ORDER :

This writ petition is filed seeking a Writ of Mandamus declaring that the action of the respondents 2 and 3 in putting the house property of the petitioner bearing No.8-2-604, Road No.10, Banjara Hills, Hyderabad for sale as arbitrary or illegal.

The 1st respondent – Andhra Bank filed O.A.No.187 of 2002 in the Debt Recovery Tribunal, Hyderabad for recovery of Rs.91 lakhs towards two loans availed by M/s. Girija Enterprises in the years 1984 & 1985. The writ petitioner was the 5th defendant in the said O.A.No.187 of 2002. In pursuance of the decree passed by the third respondent Tribunal in O.A.No.187 of 2002, a Recovery Certificate bearing R.P.No.44 of 2004, dated 23-01-2004 was issued to the 2nd respondent Recovery Officer for recovery of a sum of Rs.90,96,419-63ps. In pursuance thereof, two items of immovable properties, the title deeds of which were deposited with the first respondent Bank, were brought to sale by issuing a proclamation of sale, dated 22-12-2004 in Form-13 under Rule 52 (2) of the II-Schedule to the Income-Tax Act, 1961. In pursuance thereof, it appears that the sale was also held on 28-01-2005.

While so, this writ petition is filed claiming that the properties that were brought to sale on the basis of the Recovery Certificate dated 23-01-2004 are owned by the writ petitioner. Though the petitioner has not disputed the fact that he deposited the title deeds of his properties with the first respondent Bank, it is contended that he deposited the sale deeds of only vacant sites and that subsequently he constructed a house in the said plots in the year 1990 and that he did not execute any further mortgage deed or any other document in favour of the 1st respondent Bank and therefore the proclamation of sale in Form No.13 for the sale of house property is arbitrary and illegal. It is also contended that the petitioner was not aware of the proceedings before the third respondent and that after coming to know about the ex parte decree in O.A.No.187 of 2002, he filed a petition to set aside the said exparte decree along with a petition for condonation of delay, however, the said petition was dismissed by the third respondent Tribunal on 27-01-2005 and consequently the auction was held on 28-01-2005. The petitioner also pleads that he filed a counter before the second respondent – Recovery Officer on 28-01-2005 raising objections to the sale proposed, however the 2nd respondent did not consider the same and proceed with the sale.

Yet another contention raised by the petitioner is that two of the partners of M/s. Girija Enterprises who were defendants 3 and 4 in O.A.No.187 of 2002 died during the pendency of the proceedings before the third respondent Tribunal, but their legal representatives were not brought on record and therefore the decree is a nullity and cannot be executed. Thus, according to the petitioner, the entire proceedings including the sale of the property in question are vitiated and liable to be set aside.

I have heard the learned Counsel for the petitioner as well as learned Counsel appearing for the 1st respondent Bank and perused the material on record.

At the outset, it is to be noted that the decree in O.A.No.187 of 2002 has become final and as on today the same is subsisting. Though the petitioner claims that he was set exparte, admittedly the application filed by him for setting aside the exparte decree was rejected by the third respondent Tribunal and the said order is not

questioned in this writ petition. Even with regard to the objections filed by the petitioner before the Recovery Officer on 28-01-2005, the learned Standing Counsel for the 1st respondent Bank states that the 2nd respondent having considered the objections, has already passed an order rejecting the objections and a copy of the same has been placed before this Court. In the circumstances, I am unable to hold that the sale held on 28-01-2005 on the basis of the Recovery Certificate is either arbitrary or illegal.

So far as the contention of the learned Counsel for the petitioner that the decree in O.A.No.187 of 2002 is liable to be declared as a nullity on account of the failure of the 1st respondent Bank to bring on record the legal representatives of the deceased defendants 3 and 5, it is relevant to note that the said legal representatives are not before this Court nor they raied any objection as to the validity of the decree. The two decisions cited by the learned Counsel for the petitioner i.e., JANGLI AND ANOTHER v. DEPUTY DIRECTOR OF CONSOLIDATION AND OTHERS and ALI MOHD. KHAN v. VIJAY TULSI are clearly distinguishable on facts and do not attract to the case on hand.

For the aforesaid reasons, the Writ Petition is devoid of any merit and the same is accordingly dismissed. No costs.

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February, 2005.

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To

1 Andhra Bank, M.G. Road, Branch, Secunderabad.
2 The Recovery Officer, Debts Recovery Tribunal,
5th Floor, Triveni Complex, Abids, Hyderabad.
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